

AMENDED IN ASSEMBLY JUNE 19, 2003

AMENDED IN SENATE MAY 6, 2003

SENATE BILL

No. 598

Introduced by Senator Machado

February 20, 2003

An act to ~~amend~~ *repeal and add* Section 56.104 of the Civil Code, relating to confidentiality of medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 598, as amended, Machado. Confidentiality of medical information: *psychotherapy*.

Existing law prohibits providers of health care, health care service plans, and contractors from releasing medical information to persons authorized by law to receive that information if the information specifically relates to a patient's participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor.

This bill would ~~define "outpatient treatment" for purposes of these~~ *delete those provisions. The bill would instead prohibit a provider of health care, health care service plan, or contractor from using or disclosing psychotherapy notes, as defined, without authorization, unless for a specified purpose. Since a violation of these provisions would be punishable as a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 56.104 of the Civil Code is amended to~~
- 2 ~~SECTION 1. Section 56.104 of the Civil Code is repealed.~~
- 3 ~~56.104. (a) Notwithstanding subdivision (c) of Section~~
- 4 ~~56.10, no provider of health care, health care service plan, or~~
- 5 ~~contractor may release medical information to persons or entities~~
- 6 ~~authorized by law to receive that information pursuant to~~
- 7 ~~subdivision (c) of Section 56.10, if the requested information~~
- 8 ~~specifically relates to the patient's participation in outpatient~~
- 9 ~~treatment with a psychotherapist, unless the person or entity~~
- 10 ~~requesting that information submits to the patient pursuant to~~
- 11 ~~subdivision (b) and to the provider of health care, health care~~
- 12 ~~service plan, or contractor a written request, signed by the person~~
- 13 ~~requesting the information or an authorized agent of the entity~~
- 14 ~~requesting the information, that includes all of the following:~~
- 15 ~~(1) The specific information relating to a patient's participation~~
- 16 ~~in outpatient treatment with a psychotherapist being requested and~~
- 17 ~~its specific intended use or uses.~~
- 18 ~~(2) The length of time during which the information will be~~
- 19 ~~kept before being destroyed or disposed of. A person or entity may~~
- 20 ~~extend that timeframe, provided that the person or entity notifies~~
- 21 ~~the provider, plan, or contractor of the extension. Any notification~~
- 22 ~~of an extension shall include the specific reason for the extension,~~
- 23 ~~the intended use or uses of the information during the extended~~
- 24 ~~time, and the expected date of the destruction of the information.~~
- 25 ~~(3) A statement that the information will not be used for any~~
- 26 ~~purpose other than its intended use.~~
- 27 ~~(4) A statement that the person or entity requesting the~~
- 28 ~~information will destroy the information and all copies in the~~
- 29 ~~person's or entity's possession or control, will cause it to be~~
- 30 ~~destroyed, or will return the information and all copies of it before~~



1 ~~or immediately after the length of time specified in paragraph (2)~~
2 ~~has expired.~~

3 ~~(b) The person or entity requesting the information shall~~
4 ~~submit a copy of the written request required by this section to the~~
5 ~~patient within 30 days of receipt of the information requested;~~
6 ~~unless the patient has signed a written waiver in the form of a letter~~
7 ~~signed and submitted by the patient to the provider of health care~~
8 ~~or health care service plan waiving notification.~~

9 ~~(c) For purposes of this section, “psychotherapist” means a~~
10 ~~person who is both a “psychotherapist” as defined in Section 1010~~
11 ~~of the Evidence Code and a “provider of health care” as defined~~
12 ~~in subdivision (d) of Section 56.05 of the Civil Code.~~

13 ~~(d) This section does not apply to the disclosure or use of~~
14 ~~medical information by a law enforcement agency or a regulatory~~
15 ~~agency when required for an investigation of unlawful activity or~~
16 ~~for licensing, certification, or regulatory purposes, unless the~~
17 ~~disclosure is otherwise prohibited by law.~~

18 ~~(e) Nothing in this section shall be construed to grant any~~
19 ~~additional authority to a provider of health care, health care service~~
20 ~~plan, or contractor to disclose information to a person or entity~~
21 ~~without the patient’s consent.~~

22 *SEC. 2. Section 56.104 is added to the Civil Code, to read:*

23 *56.104. (a) Notwithstanding subdivision (c) of Section*
24 *56.10, a provider of health care, health care service plan, or*
25 *contractor shall obtain an authorization for the use or disclosure*
26 *of psychotherapy notes, except for any of the following purposes:*

27 *(1) For use by the originator of the psychotherapy notes for*
28 *treatment.*

29 *(2) For use or disclosure by the provider of health care, health*
30 *care service plan, or contractor for its own training programs in*
31 *which students, trainees, or practitioners in mental health learn*
32 *under supervision to practice or improve their skills in group, joint*
33 *family, or individual counseling, provided that the psychotherapy*
34 *notes used for these purposes have personally identifiable patient*
35 *information removed.*

36 *(3) For use or disclosure by the provider of health care, health*
37 *care service plan, or contractor to defend itself in a legal action*
38 *or other proceeding brought by the individual whose treatment is*
39 *documented in the psychotherapy notes.*

1 (4) To use or disclose psychotherapy notes to the extent that the
2 use or disclosure is required by law and the use or disclosure
3 complies with, and is limited to, the relevant requirements of that
4 law.

5 (5) To use or disclose psychotherapy notes to a law enforcement
6 agency or a regulatory agency if required for an investigation of
7 unlawful activity or for licensing, certification, or regulatory
8 purposes, but only with respect to the originator of the
9 psychotherapy notes for treatment, and only to the extent that the
10 disclosure is not otherwise prohibited by law.

11 (6) To use or disclose psychotherapy notes pursuant to
12 paragraph (6) of subdivision (c) of Section 56.10.

13 (7) To use or disclose psychotherapy notes by a provider of
14 health care, health care service plan, or contractor, consistent with
15 applicable law and standards of ethical conduct, if both of the
16 following apply:

17 (A) The provider of health care, health care service plan, or
18 contractor, in good faith, believes the use or disclosure is necessary
19 to prevent or lessen a serious and imminent threat to the safety of
20 a person or the public.

21 (B) The disclosure is made to any person who is reasonably
22 able to prevent or lessen the threat described in subparagraph (A),
23 including the target of the threat.

24 (b) A provider of health care, health care service plan, or
25 contractor shall make reasonable efforts to limit medical
26 information to the minimum that is necessary to accomplish the
27 intended purpose of the use, disclosure, or request.

28 (c) For purposes of this section, “psychotherapy notes” means
29 notes recorded in any medium by a person who is both a
30 “psychotherapist” as defined in Section 1010 of the Evidence
31 Code and a “provider of health care” as defined in subdivision (i)
32 of Section 56.05, documenting or analyzing the contents of
33 conversation during a private counseling session or a group, joint,
34 or family counseling session and that are separated from the rest
35 of the individual’s medical record. “Psychotherapy notes” exclude
36 medication prescription and monitoring, counseling sessions start
37 and stop times, the modalities and frequencies of treatment
38 furnished, results of clinic tests, and any summary of the following
39 items: diagnosis, functional status, the treatment plan, symptoms,
40 and the prognosis and progress to date.

(d) For purposes of this section, “treatment” means those activities as described in paragraph (1) of subdivision (c) of Section 56.10.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

read:

~~56.104. (a) Notwithstanding subdivision (c) of Section 56.10, no provider of health care, health care service plan, or contractor may release medical information to persons or entities authorized by law to receive that information pursuant to subdivision (e) of Section 56.10, if the requested information specifically relates to the patient’s participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:~~

~~(1) The specific information relating to a patient’s participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.~~

~~(2) The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.~~

~~(3) A statement that the information will not be used for any purpose other than its intended use.~~

~~(4) A statement that the person or entity requesting the information will destroy the information and all copies in the person’s or entity’s possession or control, will cause it to be~~

1 destroyed, or will return the information and all copies of it before
2 or immediately after the length of time specified in paragraph (2)
3 has expired.

4 (b) The person or entity requesting the information shall
5 submit a copy of the written request required by this section to the
6 patient within 30 days of receipt of the information requested,
7 unless the patient has signed a written waiver in the form of a letter
8 signed and submitted by the patient to the provider of health care
9 or health care service plan waiving notification.

10 (c) For purposes of this section, “psychotherapist” means a
11 person who is both a “psychotherapist” as defined in Section 1010
12 of the Evidence Code and a “provider of health care” as defined
13 in subdivision (d) of Section 56.05 of the Civil Code.

14 (d) This section does not apply to the disclosure or use of
15 medical information by a law enforcement agency or a regulatory
16 agency when required for an investigation of unlawful activity or
17 for licensing, certification, or regulatory purposes, unless the
18 disclosure is otherwise prohibited by law.

19 (e) Nothing in this section shall be construed to grant any
20 additional authority to a provider of health care, health care service
21 plan, or contractor to disclose information to a person or entity
22 without the patient’s consent.

23 (f) For the purposes of this section, “outpatient treatment”
24 means treatment provided at a location other than at a health
25 facility defined in subdivision (a) or (b) of Section 1250 of the
26 Health and Safety Code.

